

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ROCKLAND D. JOHNSON, )  
Petitioner, )  
v. )  
MARTY SIRMONS, Warden, )  
Respondent. )

Case No. 04-CV-724-P(C)

F I L E D  
DEC 22 2004  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**BRIEF IN SUPPORT OF MOTION TO DISMISS  
FOR FAILING TO EXHAUST STATE REMEDIES**

Comes Now the Attorney General of the State of Oklahoma, W.A. Drew Edmondson, and pursuant to this Court's Order and in response to Petitioner's Petition for Writ of Habeas Corpus files the following response and seeks to dismiss the instant petition as Petitioner has failed to exhaust state remedies.

The Advisory Committee note to Rule 5 of the Rules Governing § 2254 cases in the United States District Courts states:

An alleged failure to exhaust state remedies as to any ground in the petition may be raised by a motion by the attorney general thus avoiding the necessity of a formal answer as to that ground.

Therefore, rather than a formal answer or response hereto and in light of the authority set out herein, the Respondent hereby files a Motion to Dismiss simultaneously with the filing of the Brief in Support of Motion to Dismiss for Failure to Exhaust Necessary State Remedies.

**ARGUMENTS AND AUTHORITIES**

**PETITIONER HAS FAILED TO EXHAUST HIS STATE COURT REMEDIES AND FEDERAL REVIEW SHOULD BE DENIED.**

Petitioner is challenging his conviction out of Tulsa County where he was found guilty of two counts on first degree murder. The Petitioner filed a direct appeal to the highest state court (See Exhibit 1). Petitioner admits that in the direct appeal he did not raise the two issues which he raises in his present habeas petition. The Petitioner admits and the record supports Petitioner's claim that he has raised the two issues presented in a petition for post-conviction relief, which was denied by the Tulsa County District Court on October 20, 2004. (See Exhibit 2). Petitioner has appealed this post-conviction denial with the Oklahoma Court of Criminal Appeals ("OCCA"), whose decision is pending. It is the position of the Respondent that Petitioner has an effective state court remedy available and since that effective state court remedy is pending, the issues are not exhausted. 28 U.S.C. § 2254 (b)(3)(c).

The law is clear that as Petitioner is alleging ineffective assistance of appellate counsel as his "cause", he must exhaust that issue in the state court before coming to federal court. Murray v. Carrier, 477 U.S. 478, 489, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986)(the ineffective assistance of appellate counsel claim must be presented to the state courts as an independent claim before it may be used to establish cause for a procedural default); Edwards v. Carpenter, 529 U.S. 446, 453, 120 S.Ct. 1587, 146 L.Ed.2d 518 (2000); Shaffer v. Boone, 3 Fed. Appx, 675, 2001 WL 23135 (10<sup>th</sup> Cir. January 31, 2001). (Exhibit 3). A federal habeas corpus request is not the appropriate avenue when the Petitioner has not exhausted his state court remedies and has an available state remedy. It is Petitioner's burden to prove exhaustion and he has failed

to demonstrate the satisfaction of the exhaustion requirement. Miranda v. Cooper, 967 F.2d 392, 398 (10th Cir. 1992). Petitioner must give the state courts a fair presentation of these issues in order for Petitioner to exhaust his state court remedies. Castilles v. Peoples, 489 U.S. 346 (1989). The state courts must have had an opportunity to pass on the claims in light of a full record and where the factual basis for a claim was not presented to the state courts, the claim is unexhausted. Jones v. Hess, 681 F.2d 688 (10th Cir. 1982). It is not sufficient merely that the Petitioner's case is pending, "rather he must have given the state's highest court a 'fair opportunity' to address his claims." Picard v. Connor, 404 U.S. 270, 275-276 (1971).

In Hernandez v. Starbuck, 69 F.3d 1089, 1094 (10<sup>th</sup> Cir. 1995), the Petitioner presented a challenge to counsel's performance without exhausting state court remedies. The Tenth Circuit held:

Because Mr. Hernandez failed to exhaust his ineffective assistance claim, his petition for a writ of habeas corpus contains at least one unexhausted claim. A federal court presented with a habeas corpus petition containing both exhausted and unexhausted claims should normally dismiss the entire petition without prejudice. Rose v. Lundy, 455 U.S. 509, 510, 102 S.Ct. 1198, 1199, 71 L.Ed.2d 379 (1982). The narrow circumstances in which a federal court may consider the merits of a habeas petition containing unexhausted claims are not present in this case. See Granberry, 481 U.S. at 134-35, 107 S.Ct. at 1675-76; Miranda, 967 F.2d at 400 ("it is appropriate ... to address the merits of unexhausted ... habeas corpus claims if they fail ... to raise even a colorable federal claim, and if the interests of justice would be better served.").

The Tenth Circuit addressed the importance of the exhaustion doctrine in Demarest v. Price, 130 F.3d 922 (10<sup>th</sup> Cir. 1997). The Tenth Circuit in Demarest required exhaustion despite the fact that the constitutional issue had been presented but the evidence in support somewhat differed between that presented to the state court and

the federal court. The Tenth Circuit, quoting from Supreme Court precedent, reiterated that "fair presentation" to the state court means that the substance of the claim must be raised giving the state courts a fair opportunity to apply controlling legal principles to the facts bearing upon his constitutional claim. Demarest, 130 F .3d at 932.

Petitioner's two grounds for relief have been fairly presented to the state court but a ruling on the issues presented is still pending. For this reason, the Petitioner's petition for writ of habeas corpus must be dismissed.

Respectfully submitted,

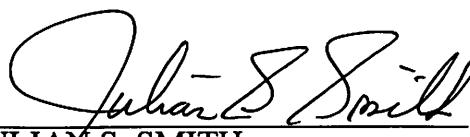
W.A. DREW EDMONDSON  
ATTORNEY GENERAL OF  
OKLAHOMA

  
JULIAN S. SMITH, OBA # 20112  
ASSISTANT ATTORNEY GENERAL  
112 State Capitol Building  
Oklahoma City, OK 73105  
(405) 521-3921, FAX 521-6246  
ATTORNEYS FOR RESPONDENT

**CERTIFICATE OF MAILING**

On this 20<sup>th</sup> day of December, 2004, a true and correct copy of the foregoing was mailed to:

Rockland D. Johnson, #419056  
R.B. Dick Conner Correctional Center  
Box 220,  
Hominy, OK 74035

  
\_\_\_\_\_  
JULIAN S. SMITH

JUN 20 2003

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA  
MICHAEL S. RICHIE  
CLERK

ROCKLAND DEJARIO JOHNSON,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

**NOT FOR PUBLICATION**

Case No. F-2002-685

**SUMMARY OPINION**

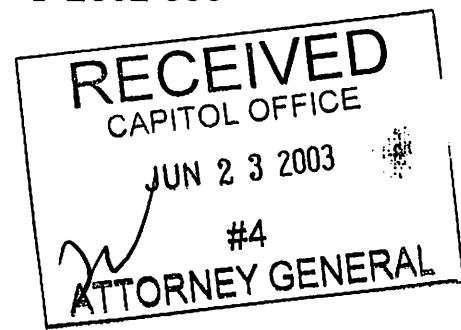
LUMPKIN, JUDGE:

Appellant, Rockland Dejario Johnson, was tried by jury in the District Court of Tulsa County, Case Number CF-2001-4067 and convicted of two counts of First Degree Murder, in violation of 21 O.S.2001, § 701.7. The jury set punishment at life imprisonment on each count. The trial judge sentenced Appellant in accordance with the jury's determination, ordering the sentences to run consecutively. Appellant now appeals his convictions and sentences.

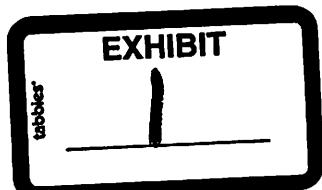
Appellant raises the following propositions of error in this appeal:

- I. The accomplice testimony was not corroborated, and the trial court's failure to instruct the jury that a witness who testified against Appellant was an accomplice whose testimony had to be corroborated, deprived Appellant of a fair trial;
- II. The trial court erred by allowing highly prejudicial photographs to be admitted into evidence over objection; and
- III. Appellant's sentence is excessive and should be modified to run concurrently, rather than consecutively.

After thoroughly considering these propositions and the entire record before us, we find reversal or modification is not required.



EXHIBIT



With respect to proposition one, we find little, if any, evidence supporting the claim that Erica Eaton was an accomplice, even as an aider and abettor. Assuming, *arguendo*, this matter should have been submitted to the jury *sua sponte* for determination, any possible error was harmless, as Eaton's testimony was sufficiently corroborated. *Simpson v. State*, 876 P.2d 690, 693 (Okl.Cr.1994); *Spears v. State*, 900 P.2d 431, 440 (Okl.Cr.1995); *Carter v. State*, 879 P.2d 1234, 1246 (Okl.Cr.1994); *Bryson v. State*, 876 P.2d 240, 256 (Okl.Cr.1994); *Bowie v. State*, 906 P.2d 759, 763 (Okl.Cr.1995); *Omalza v. State*, 911 P.2d 286, 301-02 (Okl.Cr.1995). Furthermore, Appellant's sufficiency of the evidence claim fails. *Spuehler v. State*, 709 P.2d 202, 203-04 (Okl.Cr.1985).

With respect to proposition two, we find the trial court did not abuse its discretion or err in admitting the photographs. *Welch v. State*, 2 P.3d 356, 371 (Okl.Cr.2000); *Phillips v. State*, 989 P.2d 1017, 1032 (Okl.Cr.1999). With respect to proposition three, we find it was not excessive to run the sentences consecutively. *Rea v. State*, 34 P.3d 148, 149 (Okl.Cr.2001).

## **DECISION**

The judgments and sentences are hereby **AFFIRMED**.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE P. THOMAS THORNBRUGH, DISTRICT JUDGE

### **APPEARANCES AT TRIAL**

JOHN C. HARRIS III  
P.O. BOX 52206  
TULSA, OK 74152-0206  
COUNSEL FOR APPELLANT

### **APPEARANCES ON APPEAL**

STEPHEN B. HACKETT  
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COUNSEL FOR APPELLANT

LARRY R. EDWARDS  
ASSISTANT DISTRICT ATTORNEY  
500 S. DENVER  
406 TULSA COUNTY COURTHOUSE  
TULSA, OK 74103  
COUNSEL FOR THE STATE

W.A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA  
ANN AGNEW CUPP  
ASSISTANT ATTORNEY GENERAL  
112 STATE CAPITOL BUILDING  
OKLAHOMA CITY, OK 73105  
COUNSEL FOR THE STATE

**OPINION BY: LUMPKIN, J.**

JOHNSON, P.J.: CONCUR  
LILE, V.P.J.: CONCUR  
CHAPEL, J.: CONCUR  
STRUBHAR, J.: CONCUR

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## IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

STATE OF OKLAHOMA, Plaintiff, v. ROCKLAND DEJARIO JOHNSON, A/K/A ROCKY JOHNSON A/K/A ROCKY PEEPLES Defendant.	<b>No. CF-2001-4067</b> (Criminal Felony) Filed: 07/16/2001 Closed: 05/24/2002  Judge: Dexter, Deirdre O
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### Parties

JOHNSON, ROCKLAND DEJARIO, Defendant  
STATE OF OKLAHOMA, Plaintiff  
Tulsa Police Department, ARRESTING AGENCY

### Attorneys

<b>Attorney</b> HARRIS, JOHN(Bar # )	<b>Represented Parties</b> JOHNSON, ROCKLAND DEJARIO
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### Due Dates

Docket Code	Original Due Date	Current Due Date	Description
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### Events

Event	Party	Docket	Reporter
<b>Wednesday, August 22, 2001 at 9:00 AM</b>			
PRELIMINARY HEARING ISSUE (PUBLIC DEFENDER) (PDP)	JOHNSON, ROCKLAND DEJARIO	Preliminary Hearing Docket	
<b>Wednesday, August 29, 2001 at 9:00 AM</b>			
PRELIMINARY HEARING NO ISSUE (PUBLIC DEFENDER) (PDP)	JOHNSON, ROCKLAND DEJARIO	Preliminary Hearing Docket	
<b>Monday, October 1, 2001 at 9:00 AM</b>			
PRELIMINARY HEARING ISSUE	JOHNSON,	Preliminary	



(PRIVATE ATTORNEY) (PVP )	ROCKLAND DEJARIO	Hearing Docket
<b>Friday, October 5, 2001 at 9:00 AM</b>	JOHNSON, ROCKLAND DEJARIO	J. Michael Gassett
DISTRICT COURT ARRAIGNMENT (DCA)		
<b>Wednesday, November 28, 2001 at 13:30 PM</b>	JOHNSON, ROCKLAND DEJARIO	J. Michael Gassett
DISTRICT COURT ARRAIGNMENT/MOTION HRG (DCA)		
<b>Tuesday, December 11, 2001 at 13:30 PM</b>	JOHNSON, ROCKLAND DEJARIO	J. Michael Gassett
DISTRICT COURT ARRAIGNMENT/MOTION HRG (DCA)		
<b>Wednesday, December 12, 2001 at 9:00 AM</b>	JOHNSON, ROCKLAND DEJARIO	J. Michael Gassett
DISTRICT COURT ARRAIGNMENT/MOTION HEARING (DCA)		
<b>Friday, March 1, 2002 at 13:30 PM</b>	JOHNSON, ROCKLAND DEJARIO	Deirdre O Dexter
ALLEN (DISCOVERY) HEARING (ADH )		
<b>Monday, April 1, 2002 at 10:00 AM</b>	JOHNSON, ROCKLAND DEJARIO	Deirdre O Dexter
JURY TRIAL (ISSUE) (JTI )		
<b>Friday, May 24, 2002 at 9:30 AM</b>	JOHNSON, ROCKLAND DEJARIO	P. Thomas Thornbrugh
SENTENCING (SEN )		

## Counts

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Parties appear only under the counts with which they were charged. For complete sentence information, see the court minute on the docket.

### Count # 1.

Count as filed: HM11, MURDER - IN THE FIRST  
DEGREE, in violation of 21 O.S. 701.7 Date of  
Offense: 03/21/2001

#### Defendant

#### Disposition Information

JOHNSON, ROCKLAND DEJARIO Disposed: CONVICTION , 05/24/2002. Jury Trial.

Disposed Count Code:HM11

Disposed Statute: O.S.

Count as disposed:MURDER - IN THE FIRST  
DEGREE

### Count # 2.

Count as filed: HM11, MURDER - IN THE FIRST  
DEGREE, in violation of 21 O.S. 701.7 Date of

Offense: 03/21/2001

**Defendant****Disposition Information**

JOHNSON, ROCKLAND DEJARIO Disposed: CONVICTION , 05/24/2002. Jury Trial.

Disposed Count Code:HM11

Disposed Statute: O.S.

Count as disposed:MURDER - IN THE FIRST  
DEGREE**Citation Information****Docket**

Date	Code	Count Party	Serial #	Entry Date			
05/14/2001	AF/SW	-	43964794	Aug 10 2001 9:44:01:250AM	Unrealized	\$ 0.00	
AFFIDAVIT AND RETURN OF SEARCH WARRANT RE-MICROFILMED ON 8/10/2001.							
07/16/2001	TEXT	1	JOHNSON, ROCKLAND DEJARIO	43800782	Jul 16 2001 2:55:17:587PM	-	\$ 0.00
CRIMINAL FELONY INITIAL FILING.							
07/16/2001	INFORMATION	1	JOHNSON, ROCKLAND DEJARIO	43801010	Jul 16 2001 3:07:33:533PM	-	\$ 0.00
DEFENDANT JOHNSON, ROCKLAND DEJARIO WAS CHARGED WITH COUNT #1, MURDER - IN THE FIRST DEGREE IN VIOLATION OF 21 O.S. 701.7							
07/16/2001	INFORMATION	2	JOHNSON, ROCKLAND DEJARIO	43801011	Jul 16 2001 3:07:33:567PM	-	\$ 0.00
DEFENDANT JOHNSON, ROCKLAND DEJARIO WAS CHARGED WITH COUNT #2, MURDER - IN THE FIRST DEGREE IN VIOLATION OF 21 O.S. 701.7							
07/16/2001	TEXT	-	-	43800783	Jul 16 2001 2:55:18:850PM	-	\$ 0.00
OCIS HAS AUTOMATICALLY ASSIGNED JUDGE HARRIS, JESSE S. TO THIS CASE.							
07/23/2001	DAINS	-	JOHNSON, ROCKLAND DEJARIO	43863436	Jul 25 2001 3:02:55:053PM	Unrealized	\$ 0.00
DISTRICT ATTORNEY INSPECTION NOTIFICATION							

07/23/2001 CTARRPL	-	JOHNSON, ROCKLAND DEJARIO	43883046	Jul 27 2001 4:00:10:473PM	Unrealized	\$ 0.00
SINGER, TODD: DEFENDANT PRESENT, IN CUSTODY. PUBLIC DEFENDER APPOINTED PER PAUPERS AFFADAVIT. ARRAIGNMENT HELD. DEFENDANT WAIVES READING OF INFORMATION AND FURTHER TIME TO PLEAD. COURT ENTERS NOT GUILTY PLEA. PRELIMINARY HEARING SET FOR 8-22-01 9 AM COURTROOM 344. DEFENDANT REMANDED TO CUSTODY; BOND REMAINS.						
07/25/2001 PA	-	JOHNSON, ROCKLAND DEJARIO	43885317	Jul 28 2001 8:10:24:440PM	Unrealized	\$ 0.00
<u>PAUPER'S AFFIDAVIT</u>						
08/09/2001 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	43960084	Aug 9 2001 2:33:33:370PM	Unrealized	\$ 0.00
SMITH CLANCY: CASE TRANSFERRED TO JUDGE GASSETT, ORIGINAL ASSIGNMENT HIS.						
08/13/2001 APLI	-	JOHNSON, ROCKLAND DEJARIO	43999953	Aug 15 2001 2:53:20:497PM	Unrealized	\$ 0.00
<u>APPLICATION TO WITHDRAW AS ATTORNEY OF RECORD</u>						
08/15/2001 O	-	JOHNSON, ROCKLAND DEJARIO	44024274	Aug 20 2001 12:58:47:680PM	Unrealized	\$ 0.00
<u>ORDER FOR REASSIGNMENT OF CRIMINAL DISTRICT JUDGE</u>						
08/22/2001 CTPASS	-	JOHNSON, ROCKLAND DEJARIO	44041355	Aug 22 2001 11:44:18:720AM	Realized	\$ 0.00
SMITH SARAH: DEFENDANT PRESENT, I/C AND REPRESENTED BY SHENA BURGESS. STATE REPRESENTED BY CALEB RAYNOLDS. PRELIMINARY HEARING PASSED TO 8/29/2001 NO ISSUE. BOND TO REMAIN; DFT REMANDED TO CUSTODY .						
08/22/2001 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	44081650	Aug 29 2001 8:52:41:763AM	Realized	\$ 0.00
SINGER TODD: JOHN HARRIS APPOINTED AS CONFLICT DEFENDER.						
08/27/2001 APLI	-	JOHNSON, ROCKLAND DEJARIO	44087621	Aug 29 2001 2:42:02:623PM	Unrealized	\$ 0.00
<u>APPLICATION TO WITHDRAW AS ATTORNEY OF RECORD</u>						
08/29/2001 CTPASS	-	JOHNSON, ROCKLAND DEJARIO	44091901	Aug 29 2001 6:06:50:090PM	Realized	\$ 0.00

HASKINS KYLE: DEFENDANT PRESENT, I/C AND REPRESENTED BY JOHN HARRIS WHO NOW ENTERS HIS APPEARANCE. STATE REPRESENTED BY LARRY EDWARDS. PRELIMINARY HEARING PASSED TO 10/1/2001 @ 9 AM. BOND TO REMAIN; DFT REMANDED TO CUSTODY .

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08/29/2001 O	-	JOHNSON, ROCKLAND DEJARIO	44107199	Aug 31 2001 2:16:31:550PM	Unrealized	\$ 0.00
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**ORDER APPOINTING CONFLICT DEFENDER**

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09/14/2001 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	44202320	Sep 17 2001 4:04:45:253PM	Realized	\$ 30.00
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**RETURN SUBPOENA (\$ 30.00)**

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09/14/2001 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	44202321	Sep 17 2001 4:05:01:330PM	Realized	\$ 30.00
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**RETURN SUBPOENA (\$ 30.00)**

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09/24/2001 CTFREE	-		44244192	Sep 24 2001 9:41:36:050AM	Realized	\$ 0.00
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BITTING TERRY: ORDER TO TRANSPORT CHAUNCY MINOR, DETAINED AT VISION QUEST IN FAXON, OK TO BE BROUGHT TO DISTRICT COURT OF TULSA COUNTY OKLAHOMA 10/1/2001 @ 8:30 AM TO APPEAR AS A WITNESS FOR THE STATE AGAINST ROCKLAND JOHNSON.

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09/24/2001 ADISC	-	JOHNSON, ROCKLAND DEJARIO	44263985	Sep 26 2001 12:40:19:550PM	Unrealized	\$ 0.00
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**ACKNOWLEDGEMENT OF RECEIPT OF DISCOVERY**

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09/24/2001 OT	-	JOHNSON, ROCKLAND DEJARIO	44263992	Sep 26 2001 12:40:48:080PM	Unrealized	\$ 0.00
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**ORDER TO TRANSPORT**

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09/25/2001 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	44267914	Sep 26 2001 4:05:46:623PM	Realized	\$ 30.00
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**RETURN SUBPOENA (\$ 30.00)**

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09/28/2001 RTSUB	-	JOHNSON, ROCKLAND DEJARIO	44300916	Oct 2 2001 11:53:07:987AM	Unrealized	\$ 0.00
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**RETURN SUBPOENA**

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10/01/2001 CTPRLDCA	-	JOHNSON, ROCKLAND DEJARIO	44297193	Oct 1 2001 4:58:02:527PM	Realized	\$ 0.00
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SMITH CLANCY: DEFENDANT PRESENT, I/C AND REPRESENTED BY JOHN

HARRIS. STATE REPRESENTED BY ED SNOW AND LARRY EDWARDS. COURT REPORTER: CHRISTY LEGG. CASE CALLED FOR PRELIMINARY HEARING. 4 WITNESSES SWORN; . DEFENDANT'S MOTION TO SUPPRESS OVERRULED PRIOR TO PRELIMINARY HEARING. DEMURRER OVERRULED. DEFENDANT IS BOUND OVER TO DISTRICT COURT ON THE CHARGE(S) OF MURDER 1 X 2 BEFORE JUDGE GASSETT 10/5/2001 @ 9 AM. BOND TO REMAIN; DFT REMANDED TO CUSTODY .

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10/01/2001 REQCR	-	JOHNSON, ROCKLAND DEJARIO	44297197	Oct 1 2001 4:58:19:747PM	Realized	\$ 20.00
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COURT REPORTER FEE AT TRIAL (JURY/ NON- JURY) (\$ 20.00)

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10/01/2001 MO	-	JOHNSON, ROCKLAND DEJARIO	46254050	Jul 18 2002 1:16:27:000PM	Unrealized	\$ 0.00
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MOTION TO SUPPRESS

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10/05/2001 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	44348832	Oct 9 2001 2:59:45:220PM	Unrealized	\$ 0.00
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GASSETT MICHAEL: DEFT NOT PRESENT, IN CUSTODY. REPRESENTED BY JOHN HARRIS. STATE BY TRACY PRIDDY. CASE CALLED FOR DISTRICT COURT ARRAIGNMENT. MOTIONS TO BE FILED BY 11-21-01. HEARING RESET TO 11-28-01 @1:30 P.M. BOND TO REMAIN SAME.

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11/13/2001 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	44570240	Nov 13 2001 11:09:33:907AM	Unrealized	\$ 0.00
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GASSETT MICHAEL: ORDER ALLOWING PREPARATION OF TRANSCRIPT AT PUBLIC EXPENSE SIGNED.

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11/13/2001 O	-	JOHNSON, ROCKLAND DEJARIO	44582925	Nov 14 2001 10:53:55:040AM	Unrealized	\$ 0.00
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ORDER ALLOWING PREPARATION OF TRANSCRIPT AT PUBLIC EXPENSE

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11/14/2001 CCERT	-	JOHNSON, ROCKLAND DEJARIO	44594937	Nov 15 2001 12:04:53:880PM	Unrealized	\$ 0.00
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COURT REPORTER'S CERTIFICATE

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11/21/2001 DEFT	-	JOHNSON, ROCKLAND DEJARIO	44652359	Nov 26 2001 12:17:48:890PM	Unrealized	\$ 0.00
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DEFENDANT'S EX PARTE MOTION FOR THE APPOINTMENT OF A PRIVATE INVESTIGATOR AT STATE EXPENSE

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11/28/2001 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	44676094	Nov 29 2001 11:35:52:023AM	Unrealized	\$ 0.00
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GASSETT MICHAEL: DEFT NOT PRESENT, IN CUSTODY. REPRESENTED BY JOHN HARRIS. STATE BY ED SNOW. CASE CALLED FOR DISTRICT COURT ARRAIGNMENT/MOTION HRG. HEARING PASSED BY AGREEMENT TO 12-11-01 @1:30 P.M. BOND TO REMAIN SAME.

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11/29/2001 APCA	-	JOHNSON, ROCKLAND DEJARIO	44688603	Nov 30 2001 3:25:42:840PM	Unrealized	\$ 0.00
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**AFFIDAVIT & FINDING OF PROBABLE CAUSE T.R.A.C.I.S. (ARRESTED)**

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12/04/2001 T&2	-	JOHNSON, ROCKLAND DEJARIO	44714941	Dec 5 2001 9:50:45:007AM	Unrealized	\$ 0.00
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ORIGINAL TRANSCRIPT & 2 COPIES OF PRELIMINARY HEARING OCTOBER 1, 2001 (COPY TO DA AND COPY RETAINED IN FILE FOR JOHN HARRIS)

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12/11/2001 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	44759736	Dec 11 2001 3:18:09:203PM	Unrealized	\$ 0.00
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JUDGE MICHAEL GASSETT: MOTION HEARING PASSED TO 12/12/01 9:00 AM. DEFT RECOGNIZED BACK. BOND TO REMAIN.

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12/12/2001 CTARRPL	-	JOHNSON, ROCKLAND DEJARIO	44765317	Dec 12 2001 11:45:38:673AM	Unrealized	\$ 0.00
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JUDGE MICHAEL GASSETT: DEFENDANT PRESENT, AND REPRESENTED BY JOHN HARRIS. ARRAIGNMENT HELD. BY AGREEMENT MOTION TO SUPPRESS TAKEN UNDER ADVISEMENT UNTIL TRIAL. DEFENDANT WAIVES READING OF THE INFORMATION AND FURTHER TIME TO PLEAD. DEFENDANT ENTERS A PLEA OF NOT GUILTY. JURY TRIAL SET FOR 4/1/02 9AM. BOND TO REMAIN; DEFENDANT RECOGNIZED BACK.

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12/12/2001 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	44785762	Dec 14 2001 11:21:05:410AM	Unrealized	\$ 0.00
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GASSETT MICHAEL: DISCOVERY SET FOR 3-2-02 9 A.M.

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12/19/2001 PYREQ	-	JOHNSON, ROCKLAND DEJARIO	44823981	Dec 20 2001 11:43:56:160AM	Realized	\$ 220.00
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**PAYMENT REQUEST - TRANSCRIPTS VOUCHER#101591 (\$ 220.00)**

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12/21/2001 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	44837272	Dec 26 2001 9:27:34:513AM	Unrealized	\$ 30.00
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**RETURN SUBPOENA (\$ 30.00)**

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12/21/2001 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	44837275	Dec 26 2001 9:27:43:873AM	Unrealized	\$ 30.00
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**RETURN SUBPOENA (\$ 30.00)**

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12/28/2001 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	44863872	Jan 2 2002 11:30:15:770AM	Realized	\$ 30.00
<b>RETURN SUBPOENA (\$ 30.00)</b>						
01/07/2002 TEXT	-	-	44898404	Jan 7 2002 7:26:00:360AM	-	\$ 0.00
<b>ADMINISTRATIVELY REASSIGNED TO DEXTER, J. PER ADMINISTRATIVE ORDER</b>						
03/01/2002 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	45282576	Mar 1 2002 1:30:39:830PM	Unrealized	\$ 0.00
<b>DEXTER D: ORDER SIGNED (TO ENDORSE WITNESSES)</b>						
03/01/2002 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	45283197	Mar 1 2002 2:07:55:260PM	Unrealized	\$ 0.00
<b>DEXTER D: ORDER APPOINTING A PRIVATE INVESTIGATOR SIGNED</b>						
03/01/2002 O	-	JOHNSON, ROCKLAND DEJARIO	45289888	Mar 4 2002 11:32:13:403AM	Unrealized	\$ 0.00
<b>ORDER</b>						
03/01/2002 NOEVI	-	JOHNSON, ROCKLAND DEJARIO	45289935	Mar 4 2002 11:35:09:177AM	Unrealized	\$ 0.00
<b>NOTICE OF INTENT TO USE EVIDENCE OF OTHER CRIMES AND/OR BAD ACTS</b>						
03/01/2002 AWITO	-	JOHNSON, ROCKLAND DEJARIO	45289945	Mar 4 2002 11:35:47:067AM	Unrealized	\$ 0.00
<b>APPLICATION TO ENDORSE WITNESS ON INFORMATION</b>						
03/01/2002 O	-	JOHNSON, ROCKLAND DEJARIO	45289973	Mar 4 2002 11:37:08:830AM	Unrealized	\$ 0.00
<b>ORDER APPOINTING A PRIVATE INVESTIGATOR</b>						
03/01/2002 B	-	JOHNSON, ROCKLAND DEJARIO	45289982	Mar 4 2002 11:37:31:453AM	Unrealized	\$ 0.00
<b>BRIEF IN SUPPORT OF ADMITTING EVIDENCE OF ORGANIZATIONAL OR GANG MEMBERSHIP</b>						
03/01/2002 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	45375584	Mar 14 2002 2:08:47:797PM	Unrealized	\$ 0.00
<b>DEXTER D: DEFT NOT PRESENT, IN CUSTODY. REPRESENTED BY JOHN HARRIS. STATE BY LARRY EDWARDS. SANDY CRITTENDEN, REPORTER.</b>						

CASE CALLED FOR DISCOVERY HEARING. MATERIAL EXCHANGED. ANY OTHER MATERIAL TO BE EXCHANGED WITHIN 10 DAYS OF JURY TRIAL.

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03/15/2002 DEFT	-	JOHNSON, ROCKLAND DEJARIO	45394403	Mar 18 2002 9:46:19:473AM	Unrealized	\$ 0.00
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**DEFENDANTS LIST OF WITNESSES AND EXHIBITS**

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03/19/2002 RTSUB	-	JOHNSON, ROCKLAND DEJARIO	45414877	Mar 20 2002 10:13:42:960AM	Unrealized	\$ 0.00
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**RETURN SUBPOENA/AUTHOR COLE**

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03/19/2002 RTSUB	-	JOHNSON, ROCKLAND DEJARIO	45414883	Mar 20 2002 10:14:06:833AM	Unrealized	\$ 0.00
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**RETURN SUBPOENA/BRENT ROGERS**

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03/19/2002 RTSUB	-	JOHNSON, ROCKLAND DEJARIO	45414885	Mar 20 2002 10:14:20:910AM	Unrealized	\$ 0.00
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**RETURN SUBPOENA/CHANCY MINOR**

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03/20/2002 RTSUB	-	JOHNSON, ROCKLAND DEJARIO	45422865	Mar 21 2002 8:50:33:560AM	Unrealized	\$ 0.00
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**RETURN SUBPOENA/CHRISTOPHER "JED" HENRY**

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03/21/2002 TEXT	-	JOHNSON, ROCKLAND DEJARIO	45434040	Mar 22 2002 12:17:14:957PM	Unrealized	\$ 0.00
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**DEFENDANTS LIST OF WITNESSES AND EXHIBITS (SECOND AMENDED)**

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03/21/2002 DEFT	-	JOHNSON, ROCKLAND DEJARIO	45434043	Mar 22 2002 12:17:37:927PM	Unrealized	\$ 0.00
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**DEFENDANT'S LIST OF WITNESSES AND EXHIBITS (AMENDED)**

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03/22/2002 MO	-	JOHNSON, ROCKLAND DEJARIO	45440914	Mar 25 2002 10:09:31:610AM	Unrealized	\$ 0.00
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**MOTION TO COMPEL**

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03/25/2002 DEFT	-	JOHNSON, ROCKLAND DEJARIO	45451563	Mar 26 2002 10:44:32:620AM	Unrealized	\$ 0.00
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**DEFENDANT'S MOTION IN LIMINE TO ENJOIN PROSECUTOR FROM IMPLYING GANG AFFILIATION OR IN THE ALTERNATIVE, MOTION FOR A DAUBERT HEARING**

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03/28/2002 RTSUB	-	JOHNSON, ROCKLAND	45482122	Apr 1 2002	Unrealized	\$ 0.00
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DEJARIO

11:39:58:207AM

## RETURN SUBPOENA/MARQUIS COLEMAN

04/01/2002 WHCT - JOHNSON,  
ROCKLAND 45495677 Apr 2 2002  
DEJARIO 11:38:50:297AM Unrealized \$ 0.00

**WRIT OF HABEAS CORPUS AD TESTIFICANDUM**

04/01/2002 PWHCT - JOHNSON,  
ROCKLAND 45495680 Apr 2 2002  
DEJARIO 11:38:57:827AM Unrealized \$ 0.00

**PETITION - WRIT OF HABEAS CORPUS AD TESTIFICANDUM**

04/01/2002 CTFREE - JOHNSON,  
ROCKLAND 45576099 Apr 12 2002  
DEJARIO 3:06:17:107PM Unrealized \$ 0.00

DEXTER D: DEF'T NOT PRESENT, IN CUSTODY. REPRESENTED BY JOHN HARRIS. STATE BY STEVE KUNZWEILER. CASE CALLED FOR JURY TRIAL. CASE TRANSFERRED TO JUDGE THORNBURGH INSTANTER. BOND TO REMAIN SAME.

04/02/2002 RTSUB\$ - JOHNSON,  
ROCKLAND 45506853 Apr 3 2002  
DEJARIO 11:54:35:407AM Realized \$ 30.00

**RETURN SUBPOENA/DONALD SHAWN JORDAN (\$ 30.00)**

04/02/2002 RTSUB\$ - JOHNSON,  
ROCKLAND 45506857 Apr 3 2002  
DEJARIO 11:54:55:780AM Realized \$ 30.00

**RETURN SUBPOENA/MARCO MURPHY (\$ 30.00)**

04/02/2002 RTSUB\$ - JOHNSON,  
ROCKLAND 45506874 Apr 3 2002  
DEJARIO 11:55:17:140AM Realized \$ 30.00

**RETURN SUBPOENA/TAMICA ANDERSON (\$ 30.00)**

04/02/2002 RTSUB\$ - JOHNSON,  
ROCKLAND 45506887 Apr 3 2002  
DEJARIO 11:55:34:623AM Realized \$ 30.00

**RETURN SUBPOENA/DENITA QUINNEY (\$ 30.00)**

04/02/2002 RTSUB\$ - JOHNSON,  
ROCKLAND 45506889 Apr 3 2002  
DEJARIO 11:55:51:653AM Realized \$ 30.00

**RETURN SUBPOENA/MARQUIS COLEMAN (\$ 30.00)**

04/02/2002 RTSUB\$ - JOHNSON,  
ROCKLAND 45506894 Apr 3 2002  
DEJARIO 11:56:11:450AM Realized \$ 30.00

**RETURN SUBPOENA/ERIC GOODE (\$ 30.00)**

JOHNSON,

04/02/2002 RTSUB\$	-	ROCKLAND DEJARIO	45506901	Apr 3 2002 11:56:28:653AM	Realized	\$ 30.00
<b>RETURN SUBPOENA/KEJUAN REED (\$ 30.00)</b>						
04/02/2002 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	45506904	Apr 3 2002 11:56:46:807AM	Realized	\$ 30.00
<b>RETURN SUBPOENA/AUTHUR COLE (\$ 30.00)</b>						
04/02/2002 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	45506908	Apr 3 2002 11:57:04:293AM	Realized	\$ 30.00
<b>RETURN SUBPOENA/BRENT ROGERS (\$ 30.00)</b>						
04/02/2002 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	45506910	Apr 3 2002 11:57:23:527AM	Realized	\$ 30.00
<b>RETURN SUBPOENA/TONAY HUNT (\$ 30.00)</b>						
04/02/2002 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	45506911	Apr 3 2002 11:57:38:713AM	Realized	\$ 30.00
<b>RETURN SUBPOENA/DERITH WALKER (\$ 30.00)</b>						
04/02/2002 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	45506912	Apr 3 2002 11:57:53:197AM	Realized	\$ 30.00
<b>RETURN SUBPOENA/DARREN WALKER (\$ 30.00)</b>						
04/02/2002 RTSUB\$	-	JOHNSON, ROCKLAND DEJARIO	45506924	Apr 3 2002 11:58:09:697AM	Realized	\$ 30.00
<b>RETURN SUBPOENA/CHAUNCEY MINOR (\$ 30.00)</b>						
04/02/2002 RTSUB	-	JOHNSON, ROCKLAND DEJARIO	45506927	Apr 3 2002 11:58:53:663AM	Unrealized	\$ 0.00
<b>RETURN SUBPOENA/DONALD JORDAN</b>						
04/03/2002 CTFREE	-		45515468	Apr 4 2002 11:27:11:740AM	Unrealized	\$ 0.00
<b>P. THOMAS THORNBRUGH: 2 WITNESS TAKEN IN TO CUSTODY, CHAUNCEY MINOR; NF-02-3624 AND CHRISTOPHER HENRY; NF-02-3625, BY ORDER TO THE COURT TO BE HELD WITHOUT BOND. WITNESS ORDER TO APPEAR BEFORE JUDGE THORNBRUGH ON APRIL 9, 2002 @ 9:30 AM. ORDER OF COMMITMENT ISSUED FOR BOTH WITNESS.</b>						
04/05/2002 RETCO	-		45533161	Apr 8 2002 10:00:47:320AM	Unrealized	\$ 0.00
<b>RETURN COMMITMENT (CHAUNCEY MINOR) (AMENDED)</b>						

04/05/2002 RETCO	-	45533169	Apr 8 2002 10:01:01:897AM	Unrealized	\$ 0.00	
<b>RETURN COMMITMENT (CHAUNCEY MINOR)</b>						
04/05/2002 RETCO	-	45533178	Apr 8 2002 10:01:16:007AM	Unrealized	\$ 0.00	
<b>RETURN COMMITMENT (CHRISTOPHER HENRY)</b>						
04/05/2002 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	45537656	Apr 8 2002 1:58:28:080PM	Unrealized	\$ 0.00

P. THOMAS THORNBRUGH: (JURY MINUTE) CASE CALLED, BOTH SIDES PRESENT AND ANNOUNCE READY FOR TRIAL. THE STATE OF OKLAHOMA PRESENTS AND REPRESENTED BY ED SNOW, AND LARRY EDWARDS, DEFENDANTS PRESENT AND REPRESENTED BY JOHN HARRIS. THE JURORS ARE CALLED AND SWORN AS TO QUALIFICATIONS, THE JURY IS IMPANELED AND EXAMINED FOR CAUSE. THE FOLLOWING JURORS ARE EXCUSED FOR CAUSE DOUGLAS E. MCFARLIN, GUI DELANO LOWMACK, ROSS CAMP, TIMOTHY SCOTT MCLEOD, JUAN TERRELL RIDGE, AND DAVID JR. GILLESPIE. THE JURORS ARE ACCEPTED FOR CAUSE.

**PEREMPTORY CHALLENGES:**

**STATES**

- 1.CHARLENE K. KROUTTER
- 2.FREDRICK JOHNSON
- 3.STATE WAIVES THIRD PEREMPTORY
- 4.LINDA VIDA CONWELL
- 5.ROY JR. LUMLY
- 6.DONALD RAY WYATT
- 7.STATE WAIVES SEVENTH PEREMPTORY
- 8.STATE WAIVES EIGHTH PEREMPTORY
- 9.KRISTY D. BARNETT

**DEFENDANT**

1. WAYNE FERGUSON
2. DARREL LELAND SLACK
3. BRIAN CLIFTON MAYHALL
4. JOHN NEILSON CHAPPELL
5. JOSHUA LEE NICHOLS
6. CLARENCE L. POTTER
7. DONALD LEE SMITH
8. DEFENDANT WAIVES EIGHTH PEREMPTORY
9. STEPHEN TOLBERT

**THE FOLLOWING JURORS WERE NOT SEATED BUT EXAMINED:**

- 1.VERA KRISTIN "KRISTY" SUTTE
- 2.JOE WALLACE DYCHES
- 3.DONNA KIM FORTNER
- 4.HARRY CURTIS BAILEY

**THE FOLLOWING JURORS WERE SEATED AND EXAMINED:**

1. AMANDA B. BETHEL
2. PATRICIA MAE GOWEY

3. JOSEPH V. DAVIS  
 4. SUE H. WALKER  
 5. TIM SKJERSETH  
 6. LEWIS O. WEST  
 7. TRACY LYNN MCCORKLE  
 8. JANET MOODY  
 9. STEVEN E. AMOUS  
 10. JAMES M. SEATON  
 11. EDWARD C. BENTON  
 12. JANE DELOIS WALKER  
 ALT 1 BRIAN DANIEL KNIGHT  
 ALT 2 CHRISTOPHER ONEILL

OPENING STATEMENTS ARE MADE BY THE STATE, DEFENDANT RESERVED HIS OPENING STATEMENT. 17 WITNESSES SWORN. REPORTER JODI D'VOREE ILES. RULE WAS INVOKED WITH THE EXCEPTION OF THE DEFENDANT'S MOTHER, DEBORAH PEEPLES, AND KAREN LAWRENCE ONCE HER TESTIMONY WAS RECEIVED. STATE PRESENTS EVIDENCE AND REST. DEFENDANT DEMURS AND DEMURRER IS OVERRULED. DEFENDANT MAKES OPENING STATEMENTS AND CALLS WITNESSES AND REST. THE JURY IS INSTRUCTED AS TO THE LAW. CLOSING ARGUMENTS ARE MADE. THE BAILIFF IS SWORN AND ON FEBRUARY 14, 2002 AT 11:35 A.M., THE BAILIFF AND THE JURY RETIRE FOR DELIBERATION. ON MARCH 5, 2002 AT 12:35 P.M., JURY RETURNS INTO OPEN COURT WITH THEIR VERDICT AT 8:20 P.M., WHICH IS READ IN OPEN COURT, ORDER RECORDED AND FILED, AND IS, TO WIT: "WE, THE JURY IMPANELED AND SWORN IN THE ABOVE ENTITLED CAUSE, DO UPON OUR OATHS FIND THE DEFENDANT GUILTY AND FIX PUNISHMENT AT LIFE ON COUNT ONE AND COUNT TWO. JURORS CONCURRING, SIGNED EDWARD C. BENTON, FOREMAN."

**WITNESSES SWORN:**

STATE: DEFENDANT:  
 OFFICER JAMES ROGERS IITEJUAN REED  
 E.A. COFFMAN ERIC GOOD  
 BRENT ROGERS DEBORAH PEEPLES  
 KAREN LAWRENCE HOWARD PEEPLES  
 ERICIA EATON  
 ARTHUR COLE  
 CHAUNCY MINOR  
 ANDREW WIBLEY, DR. EXPERT  
 CHRISTOPHER HENRY  
 MARK ROBINSON  
 DET. TOM CAMPBELL  
 DET. MARY LOVEALL  
 DENNIS FULLER

**CASE SET FOR SENTENCING ON MAY 24, 2002 @ 9:30AM**

04/09/2002 RETRL

-

45591195 Apr 16 2002  
8:38:42:290AM Unrealized \$ 0.00

## RETURN RELEASE (MATERIAL WITNESS) MICROFILMED 4-16-02

04/15/2002 TEXT - JOHNSON,  
ROCKLAND 45593169 Apr 16 2002  
DEJARIO 10:20:43:953AM Unrealized \$ 0.00

## STATEMENT OF THE CASE AND INSTRUCTIONS OF THE COURT

04/15/2002 V - JOHNSON,  
ROCKLAND 45593173 Apr 16 2002  
DEJARIO 10:20:57:983AM Unrealized \$ 0.00

## VERDICT

04/15/2002 V - JOHNSON,  
ROCKLAND 45593175 Apr 16 2002  
DEJARIO 10:21:05:030AM Unrealized \$ 0.00

## VERDICT

05/23/2002 RETCO - JOHNSON,  
ROCKLAND 45868096 May 24 2002  
DEJARIO 9:31:34:367AM Unrealized \$ 0.00

## RETURN COMMITMENT

05/23/2002 RULE8 - JOHNSON,  
ROCKLAND 45880111 Jul 18 2002  
DEJARIO 1:27:55:813PM Unrealized \$ 0.00

## ORDER OF THE COURT - RULE 8 HEARING

05/24/2002 CTSEN - JOHNSON,  
ROCKLAND 45870970 May 24 2002  
DEJARIO 11:53:05:283AM Unrealized \$ 0.00

P. THOMAS THORNBRUGH: DEFENDANT PRESENT, IN CUSTODY AND  
REPRESENTED BY JOHN HARRIS. STATE REPRESENTED BY ED SNOW.  
COURT REPORTER JODI ILES. CASE CALLED FOR SENTENCING.  
REPORTS RECEIVED AND COPIES FURNISHED TO PARTIES. DEFENDANT  
TO SERVE LIFE IN DEPARTMENT OF CORRECTIONS FOR COUNT ONE,  
DEFENDANT TO SERVE LIFE IN DEPARTMENT OF CORRECTIONS FOR  
COUNT TWO, BOTH TO RUN CONSECUTIVE. DEFENDANT ASSESSED PSI  
FEE IN THE AMOUNT OF \$ 250.00 AND COURT COSTS. DEFENDANT  
EXECUTES RULE 8 FORM DEFENDANT ADVISED OF APPEAL RIGHTS.  
BOND EXONERATED. JUDGMENT AND SENTENCE ISSUED. COMMITMENT  
FOR PUNISHMENT ISSUED.

05/24/2002 CONVICTED 1 JOHNSON,  
ROCKLAND 45871051 May 24 2002  
DEJARIO 12:00:18:880PM - \$ 0.00

P. THOMAS THORNBRUGH , JUDGE: CASE DISPOSED. CONVICTION.

05/24/2002 CONVICTED 2 JOHNSON,  
ROCKLAND 45871084 May 24 2002  
DEJARIO 12:00:02:083PM - \$ 0.00

P. THOMAS THORNBRUGH , JUDGE: CASE DISPOSED. CONVICTION.

05/24/2002 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	45871103	May 24 2002 12:01:19:783PM	Unrealized	\$ 0.00
<b>P. THOMAS THORNBRUGH: ORDER APPROVING ATTORNEY FEES ENTERED.</b>						
05/24/2002 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	45871113	May 24 2002 12:01:54:877PM	Unrealized	\$ 0.00
<b>P. THOMAS THORNBRUGH: DEFENDANT FOUND INDIGENT.</b>						
05/24/2002 J&S	-	JOHNSON, ROCKLAND DEJARIO	45880097	May 28 2002 11:26:54:660AM	Unrealized	\$ 0.00
<b>JUDGMENT AND SENTENCE (CT. 1 &amp; 2)</b>						
05/24/2002 COSTF	1	JOHNSON, ROCKLAND DEJARIO	45871052	May 24 2002 11:58:44:913AM	Realized	\$ 95.00
<b>COURT COSTS ON FELONY(\$ 95.00)</b>						
05/24/2002 CLEET	1	JOHNSON, ROCKLAND DEJARIO	45871053	May 24 2002 11:58:44:960AM	Realized	\$ 6.92
<b>C.L.E.E.T. PENALTY ASSESSMENT(\$ 6.92)</b>						
05/24/2002 AFIS	1	JOHNSON, ROCKLAND DEJARIO	45871054	May 24 2002 11:58:44:990AM	Realized	\$ 2.94
<b>C.L.E.E.T. PENALTY ASSESSMENT FOR AFIS(\$ 2.94)</b>						
05/24/2002 SSF	1	JOHNSON, ROCKLAND DEJARIO	45871055	May 24 2002 11:58:45:007AM	Realized	\$ 5.00
<b>SHERIFF'S SERVICE FEE ON ARRESTS(\$ 5.00)</b>						
05/24/2002 AFISA	1	JOHNSON, ROCKLAND DEJARIO	45871056	May 24 2002 11:58:45:037AM	Realized	\$ 0.06
<b>AFIS ADMINISTRATIVE FEE(\$ 0.06)</b>						
05/24/2002 CLEETA	1	JOHNSON, ROCKLAND DEJARIO	45871057	May 24 2002 11:58:45:053AM	Realized	\$ 0.08
<b>CLEET ADMINISTRATIVE FEE(\$ 0.08)</b>						
05/24/2002 PFE7	1	JOHNSON, ROCKLAND DEJARIO	45871058	May 24 2002 11:58:45:070AM	Realized	\$ 3.00
<b>LAW LIBRARY FEE(\$ 3.00)</b>						
JOHNSON, May 24 2002 \$						

05/24/2002 PSIR	1	ROCKLAND DEJARIO	45871059	11:58:45:100AM	Realized	250.00
<b>PRE-SENTENCE INVESTIGATION(\$ 250.00)</b>						
05/24/2002 COSTF	2	JOHNSON, ROCKLAND DEJARIO	45871085	May 24 2002 12:00:02:113PM	Realized	\$ 95.00
<b>COURT COSTS ON FELONY(\$ 95.00)</b>						
05/24/2002 CLEET	2	JOHNSON, ROCKLAND DEJARIO	45871086	May 24 2002 12:00:02:160PM	Realized	\$ 6.92
<b>C.L.E.E.T. PENALTY ASSESSMENT(\$ 6.92)</b>						
05/24/2002 AFIS	2	JOHNSON, ROCKLAND DEJARIO	45871087	May 24 2002 12:00:02:190PM	Realized	\$ 2.94
<b>C.L.E.E.T. PENALTY ASSESSMENT FOR AFIS(\$ 2.94)</b>						
05/24/2002 SSF	2	JOHNSON, ROCKLAND DEJARIO	45871088	May 24 2002 12:00:02:223PM	Realized	\$ 5.00
<b>SHERIFF'S SERVICE FEE ON ARRESTS(\$ 5.00)</b>						
05/24/2002 AFISA	2	JOHNSON, ROCKLAND DEJARIO	45871089	May 24 2002 12:00:02:240PM	Realized	\$ 0.06
<b>AFIS ADMINISTRATIVE FEE(\$ 0.06)</b>						
05/24/2002 CLEETA	2	JOHNSON, ROCKLAND DEJARIO	45871090	May 24 2002 12:00:02:253PM	Realized	\$ 0.08
<b>CLEET ADMINISTRATIVE FEE(\$ 0.08)</b>						
05/24/2002 PFE7	2	JOHNSON, ROCKLAND DEJARIO	45871091	May 24 2002 12:00:02:270PM	Realized	\$ 3.00
<b>LAW LIBRARY FEE(\$ 3.00)</b>						
05/28/2002 O	-	JOHNSON, ROCKLAND DEJARIO	45889613	May 29 2002 9:55:32:053AM	Unrealized	\$ 0.00
<b>ORDER APPROVING ATTORNEY FEES</b>						
05/28/2002 API	-	JOHNSON, ROCKLAND DEJARIO	45889621	May 29 2002 9:55:44:833AM	Unrealized	\$ 0.00
<b>APPLICATION FOR ORDER ALLOWING ATTORNEY FEES</b>						
05/29/2002 NOREQ	-	JOHNSON, ROCKLAND DEJARIO	45899011	May 30 2002 9:04:51:820AM	Realized	\$ 100.00

**NOTICE OF INTENT TO APPEAL; ORDER DETERMINING INDIGENCY,  
APPELLATE COUNSEL, PREPARATION OF APPEAL RECORD, GRANTING  
TRIAL COUNSEL'S MOTION TO WITHDRAW; COURT REPORTER  
ACKNOWLEDGMENT; NOTIFICATION OF APPELLATE COUNSEL IF  
APPOINTED.(\$ 100.00)**

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05/31/2002 RETCP	-	JOHNSON, ROCKLAND DEJARIO	45921647	Jun 3 2002 9:32:19:987AM	Unrealized	\$ 0.00
<b>RETURN COMMITMENT FOR PUNISHMENT</b>						
05/31/2002 RETCP	-	JOHNSON, ROCKLAND DEJARIO	45921650	Jun 3 2002 9:32:24:797AM	Unrealized	\$ 0.00
<b>RETURN COMMITMENT FOR PUNISHMENT</b>						
06/03/2002 TEXT	-	JOHNSON, ROCKLAND DEJARIO	45932485	Jun 4 2002 10:12:57:950AM	Unrealized	\$ 0.00
<b>COPY OF TRANSCRIPT OF PRELIMINARY HEARING OCTOBER 1, 2001 RETURNED BY JOHN HARRIS</b>						
06/04/2002 PSIR	-	JOHNSON, ROCKLAND DEJARIO	45941215	Jun 5 2002 9:59:07:497AM	Unrealized	\$ 0.00
<b>PRE-SENTENCE INVESTIGATION REPORT</b>						
06/04/2002 CAP	-	JOHNSON, ROCKLAND DEJARIO	45941238	Jun 5 2002 9:59:47:963AM	Unrealized	\$ 0.00
<b>CERTIFICATE OF APPEAL - #F-2002-685</b>						
06/06/2002 RETJS\$	1	JOHNSON, ROCKLAND DEJARIO	45960741	Jun 7 2002 9:28:20:270AM	Realized	\$ 30.00
<b>RETURN JUDGMENT &amp; SENTENCE (\$ 30.00)</b>						
06/10/2002 LT	-	JOHNSON, ROCKLAND DEJARIO	45980292	Jun 11 2002 9:46:26:310AM	Unrealized	\$ 0.00
<b>LETTER</b>						
06/10/2002	-	JOHNSON, ROCKLAND DEJARIO	45980295	Jun 11 2002 9:46:44:670AM	Unrealized	\$ 0.00
<b>SUPPLEMENTAL DESIGNATION OF RECORD</b>						
06/14/2002 T&2	-	JOHNSON, ROCKLAND DEJARIO	46021507	Jun 17 2002 9:06:33:343AM	Unrealized	\$ 0.00
<b>ORIGINAL TRANSCRIPT &amp; 2 COPIES OF PROCEEDINGS ON MARCH 1, 2002</b>						

06/14/2002 NO - JOHNSON,  
ROCKLAND 46022900 Jun 17 2002  
DEJARIO 10:16:08:690AM Unrealized \$ 0.00

**NOTICE OF FILING**

06/28/2002 ABST 1 - 46122515 Jun 28 2002  
11:38:43:730AM - \$ 0.00

**ABSTRACT SENT TO D.P.S.**

06/28/2002 ABST 2 - 46122516 Jun 28 2002  
11:38:43:793AM - \$ 0.00

**ABSTRACT SENT TO D.P.S.**

07/26/2002 COPYI - JOHNSON,  
ROCKLAND 46313198 Jul 26 2002  
DEJARIO 2:43:35:930PM Unrealized \$ 0.00

**COPY OF INDEX OF APPEAL RECORD (3 EACH OF VOLS I AND II)**

- 1) ORIGINAL TRANSCRIPT AND 1 COPY OF PRELIMINARY HEARING OCTOBER 1, 2001
- 2) ORIGINAL TRANSCRIPT AND 2 COPIES OF PROCEEDINGS MARCH 1, 2002

08/14/2002 NOF - JOHNSON,  
ROCKLAND 46447610 Aug 15 2002  
DEJARIO 10:07:37:620AM Unrealized \$ 0.00

**NOTICE OF FILING TRANSCRIPTS ON APPEAL**

08/14/2002 T&2 - JOHNSON,  
ROCKLAND 46447702 Aug 15 2002  
DEJARIO 10:13:14:553AM Unrealized \$ 0.00

**ORIGINAL TRANSCRIPT & 2 COPIES OF THE FOLLOWING FILED:**

- 1) JURY TRIAL (VOL I) APRIL 1-5, 2002
- 2) JURY TRIAL (VOL II) APRIL 1-5, 2002
- 3) JURY TRIAL (VOL III) APRIL 1-5, 2002
- 4) JURY TRIAL (VOL IV) APRIL 1-5, 2002
- 5) SENTENCING MAY 24, 2002

**ORIGINAL AND 2 SETS OF STATE'S EXHIBITS 1-40 AND COURT'S 06.1-07.3  
(6 EXHIBITS PICTURES)**

08/15/2002 NCRAP - JOHNSON,  
ROCKLAND 46448286 Aug 15 2002  
DEJARIO 10:43:16:360AM Unrealized \$ 0.00

**NOTICE OF COMPLETION OF RECORD ON APPEAL - COPIES TO: COURT  
OF CRIMINAL APPEALS, DISTRICT ATTORNEY, ATTORNEY GENERAL AND  
OIDS**

08/21/2002 RQCCA - JOHNSON,  
ROCKLAND 46508866 Aug 21 2002  
9:50:09:360AM Unrealized \$ 0.00

DEJARIO

## REQUEST FROM COURT CRIMINAL APPEALS TO SEND APPEAL RECORD

08/21/2002 TEXT - JOHNSON,  
 ROCKLAND 46508965 Aug 21 2002  
 DEJARIO 9:54:04:670AM Unrealized \$ 0.00

APPEAL RECORDS (2 EACH OF VOLS I AND II) AND ORIGINAL TRANSCRIPT  
 AND 1 COPY OF THE FOLLOWING TRANSMITTED TO COURT OF CRIMINAL  
 APPEALS BY CERTIFIED MAIL:

- 1) PRELIMINARY HEARING OCTOBER 1, 2001
- 2) PROCEEDINGS MARCH 1, 2002
- 3) JURY TRIAL (VOLS I-IV) APRIL 1-5, 2002
- 4) SENTENCING MAY 24, 2002

ORIGINAL AND 1 SET OF STATE'S EXHIBITS 1-40 AND COURT'S 06.1-07.3  
 (PICTURES-6 EXHIBITS) IN SEALED, MANILA ENVELOPES

08/21/2002 TEXT - JOHNSON,  
 ROCKLAND 46509202 Aug 21 2002  
 DEJARIO 10:08:07:610AM Unrealized \$ 0.00

APPEAL RECORDS (1 EACH OF VOLS I AND II) AND COPIES OF THE  
 FOLLOWING TRANSCRIPTS TRANSMITTED TO OIDS BY CERTIFIED MAIL:

- 1) PRELIMINARY HEARING OCTOBER 1, 2001
- 2) PROCEEDINGS MARCH 1, 2002
- 3) JURY TRIAL (VOLS I-IV) APRIL 1-5, 2002
- 4) SENTENCING MAY 24, 2002

COPIES OF STATE'S EXHIBITS 1-40 AND COURT'S 06.1-07.3 (6 EXHIBITS  
 PICTURES)

08/22/2002 RECM\$ - JOHNSON,  
 ROCKLAND 46533361 Aug 23 2002  
 DEJARIO 3:01:29:190PM Realized \$ 19.70

RECEIPT FOR CERTIFIED MAIL (\$ 19.70)

08/22/2002 RECM\$ - JOHNSON,  
 ROCKLAND 46533363 Aug 23 2002  
 DEJARIO 3:01:43:330PM Realized \$ 27.65

RECEIPT FOR CERTIFIED MAIL (\$ 27.65)

08/23/2002 RETCM - JOHNSON,  
 ROCKLAND 46544445 Aug 26 2002  
 DEJARIO 3:18:08:210PM Unrealized \$ 0.00

RETURN RECEIPT CERT. MAIL DELIVERED TO OIDS 8/22/02

08/30/2002 RETCM - JOHNSON,  
 ROCKLAND 46589555 Sep 3 2002  
 DEJARIO 8:51:43:543AM Unrealized \$ 0.00

RETURN RECEIPT CERT. MAIL DELIVERED TO JAMES PATTERSON:

## COURT OF CRIMINAL APPEALS

09/11/2002 PYREQ - JOHNSON,  
ROCKLAND 46677439 Sep 13 2002  
DEJARIO 9:34:46:917AM Unrealized \$ 0.00

**PAYMENT REQUEST - TRANSCRIPTS VOUCHER # 109266**

10/17/2002 RWHCT\$ - JOHNSON,  
ROCKLAND 46923265 Oct 18 2002  
DEJARIO 10:32:29:590AM Realized \$ 57.33

**RETURN WRIT- HABEAS CORPUS AD TESTIFICANDUM (AC08) (\$ 57.33)**

10/18/2002 RWHCT\$ - JOHNSON,  
ROCKLAND 46933696 Oct 21 2002  
DEJARIO 11:31:41:540AM Realized \$ 56.67

**RETURN WRIT- HABEAS CORPUS AD TESTIFICANDUM (AC08) (\$ 56.67)**

11/27/2002 ABST 2 JOHNSON,  
ROCKLAND 47205105 Nov 27 2002  
DEJARIO 9:53:45:507AM - \$ 0.00

**ABSTRACT (RE)SENT TO D.P.S.**

11/27/2002 ABST 1 JOHNSON,  
ROCKLAND 47205106 Nov 27 2002  
DEJARIO 9:53:45:507AM - \$ 0.00

**ABSTRACT (RE)SENT TO D.P.S.**

06/30/2003 TEXT - JOHNSON,  
ROCKLAND 48694226 Jun 30 2003  
DEJARIO 8:13:27:670AM Unrealized \$ 0.00

**APPEAL RECORD (1 EACH OF VOL I AND II) AND COPY OF THE  
FOLLOWING RETURNED BY OIDS:**

- 1) PRELIMINARY HEARING OCTOBER 1, 2001
- 2) PROCEEDINGS MARCH 1, 2002
- 3) JURY TRIAL (VOLS I-IV) APRIL 1-5, 2002
- 4) SENTENCING MAY 24, 2002

COPY OF STATE'S EXHIBITS 1-40 AND COURT'S EXHIBIT'S 06.1, 06.2, 06.3,  
07.1, 07.2 AND 07.3

07/08/2003 TEXT - JOHNSON,  
ROCKLAND 48757464 Jul 9 2003  
DEJARIO 11:39:06:947AM Unrealized \$ 0.00

**PRO SE MOTION FOR SUSPENDED SENTENCE (COPY TO DA & JUDGE  
THORNBURGH)**

07/09/2003 ODNY - JOHNSON,  
ROCKLAND 48765725 Jul 10 2003  
DEJARIO 11:27:47:077AM Unrealized \$ 0.00

**ORDER DENYING DEFENDANT'S PRO SE MOTION FOR SUSPENDED  
SENTENCE**

07/29/2003 MANTO - JOHNSON,  
ROCKLAND 48901792 Jul 29 2003  
DEJARIO 4:56:53:193PM Unrealized \$ 0.00

**RECEIVED MANDATE (AFFIRMED) DELIVERED TO JUDGE THORNBRUGH**

07/30/2003 TEXT - JOHNSON,  
ROCKLAND 48906399 Jul 30 2003  
DEJARIO 11:46:29:193AM Unrealized \$ 0.00

ORIGINAL TRANSCRIPTS OF THE FOLLOWING RETURNED BY APPELLATE COURT;

1. PROCEEDINGS OCT. 1, 2001
2. PROCEEDINGS MARCH 1, 2002
3. PROCEEDINGS APRIL 1-5, 2002 (VOL 1)
4. PROCEEDINGS APRIL 1-5, 2002 (VOL II)
5. PROCEEDINGS APRIL 1-5, 2002 (VOL III)
6. PROCEEDINGS APRIL 1-5, 2002 (VOL IV)
7. PROCEEDINGS MAY 24, 2002

EXHIBITS;

1. STATE'S EXHIBITS 1-40
2. COURT'S EXHIBITS 06.1-06.3
- COURT'S EXHIBITS 07.1-07.3

UNMARKED PAPERS

07/30/2003 CTFREE - 48908568 Aug 13 2003  
3:37:33:067PM Unrealized \$ 0.00

THORNBRUGH, P. THOMAS: MANDATE RECEIVED AND ORDERED FILED AND SPREAD OF RECORD THIS 30TH DAY OF JULY, 2003.

08/01/2003 MAN - JOHNSON,  
ROCKLAND 48929250 Aug 4 2003  
DEJARIO 9:48:05:407AM Unrealized \$ 0.00

MANDATE/AFFIRMED

08/20/2003 TEXT - JOHNSON,  
ROCKLAND 49052694 Aug 20 2003  
DEJARIO 3:52:40:067PM Unrealized \$ 0.00

RETURN OF THE COURT CLERK (MANDATE) MAILED TO COURT OF CRIMINAL APPEALS.

RECEIPT FOR MANDATE MAILED TO COURT OF CRIMINAL APPEALS.

12/17/2003 CTRS - 49992969 Dec 17 2003  
6:54:18:783AM - \$ 0.00

CLAIM FOR INTERCEPT OF TAX REFUND

01/07/2004 MO - JOHNSON,  
ROCKLAND 50115926 Jan 8 2004  
DEJARIO 9:18:55:003AM Unrealized \$ 0.00

PRO-SE MOTION FOR FILES, RECORDS, TRANSCRIPTS AT PUBLIC EXPENSE (COPY TO DA & JUDGE THORNBRUGH)

01/16/2004 TEXT	-	JOHNSON, ROCKLAND DEJARIO	50192895	Jan 20 2004 9:26:24:047AM	Unrealized	\$ 0.00
<b>RESPONSE TO MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE</b>						
01/20/2004 CTFREE	-		50335320	Feb 6 2004 11:36:30:713AM	Unrealized	\$ 0.00
THORNBRUGH, P. THOMAS: ORDER DENYING MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE ENTERED.						
01/22/2004 ODNY	-	JOHNSON, ROCKLAND DEJARIO	50227343	Jan 23 2004 9:13:55:167AM	Unrealized	\$ 0.00
<b>ORDER DENYING MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE</b>						
09/20/2004 APCR	-	JOHNSON, ROCKLAND DEJARIO	52406114	Sep 21 2004 9:47:34:993AM	Realized	\$ 0.00
APPLICATION FOR POST CONVICTION RELIEF - COPY TO DISTRICT ATTORNEY AND JUDGE THRONBRUGH						
10/15/2004 APCR	-	JOHNSON, ROCKLAND DEJARIO	52620856	Oct 18 2004 9:47:18:723AM	Realized	\$ 0.00
<b>RESPONSE TO APPLICATION FOR POST CONVICTION RELIEF</b>						
10/19/2004 CTFREE	-	JOHNSON, ROCKLAND DEJARIO	52639949	Oct 19 2004 2:37:36:913PM	Realized	\$ 0.00
THORNBRUGH, P. THOMAS: ORDER DENYING APPLICATION FOR POST-CONVICTION RELIEF ENTERED.						
10/20/2004 ODENY	-	JOHNSON, ROCKLAND DEJARIO	52655436	Oct 21 2004 8:57:52:930AM	Realized	\$ 0.00
<b>ORDER DENYING APPLICATION FOR POST-CONVICTION RELIEF - CERTIFIED COPY TO DEFENDANT</b>						
10/25/2004 NOAPP	-	JOHNSON, ROCKLAND DEJARIO	52688479	Oct 26 2004 10:14:51:187AM	Realized	\$ 0.00
<b>NOTICE OF INTENT TO APPEAL (COPY TO DA &amp; JUDGE THORNBRUGH)</b>						
11/01/2004 COPYI	-	JOHNSON, ROCKLAND DEJARIO	52733614	Nov 1 2004 1:03:31:477PM	Realized	\$ 200.00
<b>COPY OF INDEX OF APPEAL RECORD(\$ 200.00)</b>						
11/01/2004 NCRAP	-	JOHNSON, ROCKLAND DEJARIO	52733663	Nov 1 2004 1:07:24:160PM	Realized	\$ 0.00
<b>NOTICE OF COMPLETION OF RECORD ON APPEAL - COPIES TO: COURT</b>						

OF CRIMINAL APPEALS, DISTRICT ATTORNEY, ATTORNEY GENERAL AND  
ROCKLAND JOHNSON.

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11/19/2004 CAP - JOHNSON,  
ROCKLAND 52888286 Nov 22 2004  
DEJARIO 10:28:32:407AM Realized \$ 0.00

CERTIFICATE OF APPEAL - # PC- 2004-1154

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## Federal 10th Circuit Cases

### Shaffer v. Boone

2001 10CIR 51

242 F.3d 390

Case Number: 00-5155

Decided: 01/10/2001

Modified: 01/31/2001

10th Cir.(Okla.)

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Cite as: 2001 10CIR 51, 242 F.3d 390

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This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

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DOUGLAS C. SHAFFER, Petitioner-Appellant,  
v.  
BOBBY BOONE, Warden, Respondent-Appellee.

(D.C. No. 96-CV-1141-K)(N.D. Okla.)

#### ORDER AND JUDGMENT\*

Before BALDOCK, HENRY, and LUCERO, Circuit Judges.<sup>2</sup>

HENRY, Circuit Judge.

¶1 Douglas Shaffer, a state prisoner proceeding pro se, seeks a certificate of appealability ("COA") after the district court dismissed his 28 U.S.C. § 2254 habeas petition. See 28 U.S.C. § 2253(c)(1)(A) (providing that a COA is a necessary predicate to any appeal from a final order in a § 2254 proceeding). Because Mr. Shaffer has not "made a substantial showing of the denial of a constitutional right," id. § 2253(c)(2), this court denies his request for a COA and dismisses this appeal.

¶2 Mr. Shaffer was convicted of second-degree felony murder after prior conviction of two or more felonies. He was sentenced to sixty years' imprisonment. In his habeas petition, together with his amended petitions, Mr. Shaffer raised eleven grounds of error: (1) ineffective assistance of trial counsel; (2) violation of the Sixth Amendment's confrontation clause through the admission of a nontestifying codefendant's confession; (3) reversible error resulting from



the prosecutor's comments regarding Mr. Shaffer's Fifth Amendment right to remain silent; (4) denial of due process through the prosecutor's improper closing argument; (5) ineffective assistance of appellate counsel; (6) violation of the Fifth Amendment through the trial court's instructions; (7) failure of the information to state all the essential elements of the underlying crime; (8) erroneous sentence enhancement; (9) the state court's lack of subject matter jurisdiction; (10) actual innocence of past convictions considered at sentencing; and (11) violation of due process through extension of leniency to Mr. Shaffer's codefendant in exchange for her testimony against him. The district court denied the first four claims on the merits; dismissed claims five, six, eight, ten, and eleven as procedurally barred absent prejudice or fundamental miscarriage of justice; and denied claims seven and nine as not cognizable in federal habeas. This appeal followed.

**¶3** We construe Mr. Shaffer's allegations liberally, pursuant to *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). After a careful review of the record and the applicable case law, we conclude that Mr. Shaffer fails to make a substantial showing of the denial of a constitutional right as required under 28 U.S.C. § 2253(c)(2) for a COA. Specifically, Mr. Shaffer fails to demonstrate "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 120 S. Ct. 1595, 1604 (2000). Because we agree with the district court's well-reasoned assessment of the issues presented on appeal, we decline to duplicate the same analysis here.

**¶4** Accordingly, for substantially the same reasons set forth in the district court's June 21, 2000, Order, a copy of which is attached, we DENY Mr. Shaffer's motion for a COA and DISMISS his appeal.

#### FOOTNOTES

<sup>1</sup>. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

<sup>2</sup>. After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

[Attachment not available electronically.]

#### **Citationizer<sup>®</sup> Summary of Documents Citing This Document**

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